IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

SECOND APPEAL NO. 307 OF 2001
Purushottam B. Chourasia and others..vs.. M/s. Hindustan Petroleum Corporation Ltd.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. Vasanti A. Naik, J.

DATED : 12/09/2007

Heard Shri Ghare, learned counsel for appellants and Shri Bhangde, learned counsel for respondent sole.

The appellant is the original defendant. A suit was filed by respondent M/s. H. P. C. L. for specific performance of term No.3(G) of the registered lease deed dated 29/5/1962 for renewal of its lease for the period from 1/11/1971 to 31/10/1981. The Plaintiff-HPCL had sought a decree compelling appellant No.1 to execute the renewal of lease from 1/11/1971 to 31/10/1981. During the pendency of the Special Civil Suit No. 248/1974, the present appellant No.2 filed an application under the provisions of Order 1 Rule 10 of the Code of Civil Procedure

for joining him as a necessary party. This application dated 1/12/1980 was opposed by the HPCL, but the Trial Court by an order dated 14.11.1984, passed below exhibit 25, allowed the application. The plaintiff-HPCL preferred civil revision application bearing No.115/1985 against the order passed by the trial Court on 14/11/1984. During the pendency of the civil revision application, the appellant No.1/original defendant filed a pursis on 7/3/1988 intimating to the Court that appellant No.2 has become a joint owner of the suit property, in view of the fact that he had purchased a part of suit property by registered sale deed dated 15-20/1/1988. In view of this pursis, the plaintiff did not press the civil revision application and withdrew the same. The plaintiff then filed an application for amendment of the plaint for adding the appellant No.2 as a party. The application under Order 6 Rule 17 was allowed by the Court. After appellant No.2 was joined as a party/defendant, he moved an application under Order 7 Rule 11 of the Code of Civil Procedure for dismissal of the suit on the ground that the same was barred by limitation. After hearing parties to the application the trial Court rejected the plaint and dismissed the suit filed by the plaintiff by a judgment and decree dated 19/3/1991.

According to Trial Court, the order passed by the trial Court on exh.25 on 14/11/1984 had attained finality, in view of withdrawal of the civil revision application by the plaintiff-HPCL. The trial Court held that the suit against the present appellant No.2 was barred by limitation and hence, the plaint was liable to be rejected under the provisions of Order 7 Rule 11 of the CPC.

The respondent-HPCL, filed appeal against the judgment and decree passed by the trial Court on 19/3/1991. The first Appellate Court after hearing parties, reversed the findings recorded by the trial Court and held that the rejection of the plaint and the dismissal of the suit was not proper. The judgment of the first Appellate Court is challenged in the instant appeal.

Mr. Ghare, the learned counsel for the appellant submitted that the first Appellate Court was not justified in reversing the judgment passed by the Trial Court on 19/3/1991, by holding that the suit filed by the plaintiff against defendant No.2/present appellant No.2 was not barred by the limitation. The counsel for the appellant further submitted that in view of the withdrawal of Civil Revision Application No. 115/1985, the order passed by the trial Court on 14/11/1984 joining appellant No.2 as a necessary party had attained finality and the plaintiff

could not have again re-agitated the question about joining of appellant No.2 as a necessary party to the suit. The counsel for the appellant further canvassed that the prescribed period of limitation for filing a suit for specific performance of contract was three years and since, appellant No.2 was joined as a party/defendant on 1/9/1990, the suit filed by the plaintiff against defendant No.2/appellant No.2 was clearly barred by limitation.

Shri Bhangde, learned counsel for the respondent submitted that the judgment passed by the Trial Court on 19/3/1991 rejecting the plaint filed by the plaintiff was clearly illegal and the first Appellate Court was, therefore, justified in reversing the findings recorded by the trial Court. It was further submitted on behalf of the respondent that the property was purchased by appellant No.2 during the pendency of the proceedings on 15-20/1/1988. In view of the aforesaid position, the interest in the suit property was transferred to the appellant No.2 on 15-20/1/1988 and since the appellant no.2 was joined as a party on 1/9/1990, the suit filed against respondent No.2 could not have said to be barred by limitation.

I have perused both the judgments. It is not in dispute that by an order dated 14/11/1984, the trial Court allowed the

application filed by appellant No.2 for joining him as a necessary party. This order was challenged by the plaintiff in Civil Revision Application No.115/1985. It is pertinent to note that at the relevant time, when the appellant No.2 was permitted to join as a party/defendant in the year 1984, there was merely an agreement of sale executed in favour of the appellant No.2, but the appellant No.2 had not purchased the suit property from appellant No.1/original defendant. Appellant No.2 purchased the suit property on 15-20/1/1988 and in view of aforesaid position, the plaintiff-HPCL had withdrawn the civil revision application. After appellant No.2 purchased the suit property, the application was again filed by the plaintiff-HPCL under the provisions of Order 6 Rule 17 of CPC for amendment of the plaint. The proposed amendment incorporated the facts about joining of appellant No.2 as a necessary party to the suit. The civil application was allowed, the appellant No.2 was joined as a party/defendant No.2 on 1/9/1990.

In the facts and circumstances of the case, the trial Court was not justified in rejecting the plaint filed by the plaintiff solely on the ground that the suit filed by the plaintiff against defendant No.2 was barred by limitation. According to trial Court, the plaintiff ought to have joined appellant No.2 as party

defendant at the time of filing suit in the year 1974 itself. It is also notable that for the first time, the interest in the part of suit property passed on to the appellant No.2, in view of the registered sale deed dated 15-20/1/1988. The plaintiff would have sought a declaration against defendant No.2/appellant No. 2 for renewal of lease only from the date when the appellant No.2 became the owner in the part of suit property. Since, the appellant No.2 became the owner in the part of suit property in the year 1988, it could not be said that the suit filed by the plaintiff against defendant No.2/appellant No.2 was barred by limitation as the plaintiff joined appellant No.2 as a party/defendant No.2 on 1/9/1990. The suit filed by the plaintiff was not barred by the provisions of Limitation Act. The suit was also filed against appellant No.2 within a period of 3 years from the date, the of cause of action arose against defendant No.2. The cause action arose in January,1988 and the suit filed by the plaintiff against defendant No.2 after his joinder in the year 1990, was clearly not barred by limitation. The trial Court seriously erred in rejecting the plaint filed by the plaintiff on the ground that it was barred by limitation without considering the fact that the cause of action against defendant No.2/appellant No.2 arose for the first time in the year 1988. The Appellate

Court was, therefore, justified in reversing the decree passed by the trial Court and holding that the suit filed by the plaintiff against the defendant No.2 was not barred by limitation. The question as to whether the order passed by the trial Court on 14/11/1984 below exh.25 had attained finality and would operate as res judicata between the parties, did not arise for consideration at all.

The sale deed having been executed in favour of defendant No.2 in the year 1988 the cause of action arose against the defendant No.2 for the first time in the year 1988. Therefore, the plaintiff sought the relief of renewal of lease also against defendant No.2 as the defendant No.2 jointly owned suit property along with defendant No.1.

Since, no substantial question of law arises for consideration in this Second Appeal. The same is dismissed with no order as to costs.

JUDGE

JSA.

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CORAM : Smt. Vasanti A. Naik, J.

DATED : 12/09/2007

Civil Application No. 4004/2007

Heard Mr. De, the learned counsel for the applicant.

Since this Court has dismissed the second appeal, the counsel for the applicant submitted that the applicant would file an appropriate application before the trial Court for joining him as a necessary party. In view of this, the counsel for the applicant seeks permission on behalf of the applicant to withdraw this civil application.

Permission is granted. The civil application is disposed of as withdrawn.

JUDGE

jsa.